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6  
7 Attorney for Plaintiff, Lawrence Peck, as an individual,  
for himself, and on behalf of all others similarly situated  
8

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

11 LAWRENCE J. PECK, an individual and  
12 on behalf of all other similarly aggrieved  
employees,  
13

14  
15 Plaintiff,

16  
17 vs.

18 SWIFT TRANSPORTATION CO.  
19 ARIZONA, LLC and DOES 1 through  
20 30, inclusive,

21  
22 Defendants.  
23  
24  
25  
26  
27

Case No.: 5:17-cv-1695 MWF (GJSx)  
Assigned to Hon. Michael W. Fitzgerald

**DECLARATION OF JAMES S. CAHILL  
WITH EXHIBITS SUPPORTING  
PLAINTIFF'S MOTION FOR ORDER  
REMANDING REMOVED ACTION TO  
STATE COURT AND AWARDED  
ATTORNEYS' FEES**

Date: October 16, 2017  
Time: 10:00 a. m.  
Court: Courtroom 5A

Complaint Filed: Nov. 20, 2014  
FAC filed: Dec. 3, 2014  
Complaint Removed: Aug. 21, 2017  
Trial Date: None

28 **DECLARATION OF JAMES S. CAHILL WITH EXHIBITS SUPPORTING  
PLAINTIFF'S MOTION FOR ORDER REMANDING REMOVED ACTION TO  
STATE COURT AND AWARDED ATTORNEYS' FEES**

1 I, James S. Cahill, declare as follows:

2  
3 1. I am an attorney at law duly licensed to practice before this district court  
4 and am employed by the Law Offices of Neal J. Fialkow, Inc., counsel of record for  
5 Plaintiff Lawrence J. Peck in the above-captioned case. I make this Declaration in  
6 support of Plaintiff's Motion for Order Remanding Remove Action to State Court and  
7 Awarding Attorneys' Fees. I am sufficiently familiar with the facts and circumstances  
8 surrounding this litigation and, if called to testify as a witness, I could and would  
9 competently do so under oath.  
10  
11

12 **A. PECK PAGA ACTION**

13 2. On November 20, 2014, Plaintiff Lawrence J. Peck filed the instant  
14 representative action for Violations Under the California Private Attorney General Act  
15 ("PAGA") the California Superior Court for Riverside County and entitled *Lawrence*  
16 *J. Peck et al. v. Swift Transportation Co. Arizona, LLC* Case No. RIC1411184 ("*Peck*  
17 *PAGA Action*"). A First Amended Complaint ("PAGA FAC") was filed on December  
18 3, 2014. This is not a putative class action. Dkt.#1 (Not.Rem. at 4:1-19, Exs. A, B).  
19  
20

21 3. In lieu of an answer, Defendant filed its motion to dismiss or stay the  
22 *Peck PAGA Action*. Dkt.#1 (Not. Rem. at 18:7-15, Exs. J-U). Defendant's motion  
23 was premised on forum non conveniens. Plaintiff opposed the motion. Defendant  
24 argued a stay was required to avoid duplicative litigation. On March 17, 2015, the  
25 Superior Court granted in part Defendant's motion and stayed the *Peck PAGA Action*  
26  
27  
28

1 until July 14, 2015. The stay was continued to November 16, 2015, then to May 6,  
2 2016 and again through June 22, 2016.

3 4. On June 22, 2016, the Superior Court granted Plaintiff's motion lifting the  
4 stay of the *Peck* PAGA Action which had been in place for over 15 months. Dkt.#1  
5 (Not.Rem. at 20-24, Dex. V-Y). A true and correct copy of the Reporter's Transcript  
6 for the June 22, 2016 hearing before the Superior Court is attached as Exhibit 1.  
7

8 5. On July 11, 2016, Defendant filed its Answer in the *Peck* PAGA Action.  
9 Dkt.#1 (Not.Rem. at 18:24, Ex. Z). Immediately thereafter, my law firm served form  
10 interrogatories and over the past year propounded special interrogatories and  
11 document demands on Defendant and deposed Defendant's witnesses who Defendant  
12 identified having personal knowledge of Defendant's affirmative defenses in the *Peck*  
13 PAGA Action. A number of depositions of Defendant's other witnesses were planned  
14 for September/October 2017. Additionally, discovery motions were heard by the  
15 Superior Court. Dkt.##1,2 (Not.Rem. 18:26-19:10, 19:18-20, Exs. BB-MM, XX-YY).  
16  
17  
18

19 6. At the Case Management Conference on May 22, 2017, Superior Court  
20 Judge Sharon J. Waters found the *Peck* PAGA Action was complex, issued her Case  
21 Management Order and announced that at the trial setting conference on July 11, 2017  
22 the trial date and pre-trial deadlines would be set. A true and correct copy of Judge  
23 Waters's Case Management Conference Order—PAGA Claims is attached as Exhibit  
24 2. At the trial setting conference on July 11, Judge Waters set trial plan hearing for  
25 November 15, 2017, inquired about dispositive motions, and set a hearing for August  
26  
27  
28

1 28, 2017 to determine if this PAGA action is entitled to a jury trial. Judge Waters set  
2 trial for August 17, 2018.

3 7. Before Defendant filed its removal notice in the *Peck* PAGA Action, my  
4 office filed and served two additional discovery motions against Defendant: motion to  
5 compel answers to special interrogatories set for hearing on September 11, 2017 ; and  
6 motion to compel production of document at deposition set for hearing on September  
7 19. A true and correct copy of the cover page of Plaintiff's Notice of Motion (1) To  
8 Compel Further Response To Special Interrogatories (Set One) Against Defendant and  
9 (2) For Order Awarding Monetary Sanctions is attached as Exhibit 3. A true and  
10 correct copy of the cover page of Plaintiff's Notice of Motion (1) To Compel  
11 Production of Documents At Deposition Against Defendant and (2) For Award of  
12 Monetary Sanctions is attached as Exhibit 4. These motions were taken off calendar  
13 when the Superior Court was notified about Defendant's removal notice.

14 8. We also noticed the deposition of Ms. Sarah Koogle for September 4,  
15 2017 in Phoenix, Arizona. Ms. Koogle was identified in Defendant's verified  
16 responses to form interrogatories that Ms. Koogle had personal knowledge about  
17 Defendant's affirmative defenses in the *Peck* PAGA Action. Defendant had been  
18 resisting her deposition for several motions. This deposition did not occur due to  
19 Defendant's removal notice. A true and correct copy of Mr. Neal Fialkow's  
20 September 1, 2017 letter to Mr. Robert Mussig regarding Ms. Koogle's deposition is  
21 attached as Exhibit 5.

1           9.     On April 10, 2017, my office served Plaintiff's Special Interrogatories,  
2 Set One on Defendant. Defendant served its responses and objections on May 30. A  
3 true and correct copy of Defendant Swift Transportation Co. of Arizona, LLC's  
4 Responses to Plaintiff's Special Interrogatories, Set One is marked Exhibit 6 and is  
5 attached.  
6

7           10.    On November 30, 2016, Mr. Neal Fialkow deposed Mr. James  
8 Fitzsimmons in the *Peck* PAGA Action. Mr. Fitzsimmons's testimony was transcribed  
9 by a certified shorthand reporter. True and correct copies of the cover page, page 150,  
10 and page 205 of the transcript of James Fitzsimmons dated November 30, 2016 are  
11 collectively marked Exhibit 7 and are attached.  
12

13           11.    On July 26, 2017, Mr. Neal Fialkow deposed Mr. James Fitzsimmons  
14 who Defendant presented for this deposition as Defendant's person(s) most qualified  
15 ("PMQ") in response to our June 14, 2017 deposition notice on Defendant under Cal.  
16 Code Civ. Proc. §2015.230 in the *Peck* PAGA Action. Mr. Fitzsimmons's testimony  
17 was transcribed by a certified shorthand reporter. The following questions and answers  
18 occurred:  
19

20                   Q: How long would you say a pre-trip normally takes.  
21

22                   A: It would depend on-  
23

24                   Q: A pre-trip inspection?  
25

26                   A: It would depend on the driver.  
27

28                   Q: What is the average time?

                  A: Two minutes.

1 True and correct copies of the cover page, pages 74 and 163 of the Transcript of  
2 Deposition of James Lee Fitzsimmons dated July 26, 2017 are collectively marked  
3 Exhibit 8 and are attached.

4  
5 **B. PECK CLASS ACTION**

6 12. On September 25, 2014, a putative class action was filed in the California  
7 Superior Court for Riverside County and entitled *Lawrence J. Peck v. Swift*  
8 *Transportation Co. Arizona, LLC* Case No RIC 140981 (“*Peck Class Action*”). A  
9  
10 PAGA claim is not asserted.

11 13. Defendant filed an answer on October 22, 2014. Defendant removed the  
12  
13 *Peck Class Action* to the U. S. District Court, Central District of California, Case No.  
14 5:14-cv-2206-VAP-KKx under the Class Action Fairness Act on October 24, 2014. A  
15 true and correct copy of Defendant’s Notice of Removal in the *Peck Class Action*  
16  
17 (without exhibits) is attached as Exhibit 9.

18 14. Plaintiff moved to stay the *Peck Class Action* which Defendant opposes  
19  
20 (in part) due to Defendant’s removal of the *Peck PAGA Action*. The stay motion was  
21 set for hearing on September 11, 2017 but Chief U.S. District Judge Virginia A.  
22 Phillips vacated the hearing and submitted the matter on the papers. The moving and  
23 opposing papers are on file in the *Peck Class Action*, Dkt.##32-33, 37.

24  
25 **C. ATTORNEYS’ FEES**

26 15. I spent approximately 17 hours preparing and conducting Local Rule 7-3  
27 Conference and preparing Plaintiff’s Motion for Remand and this Declaration. My  
28

1 hourly rate for this matter is \$750.00 for a total of \$12,750. In my opinion, \$12,750 is  
2 fair and reasonable sum of attorneys' fees for bringing this Remand Motion.

3 16. I graduated from Loyola Law School, Los Angeles in 1976. I was  
4 admitted to the California State Bar in 1976 and have been practicing continuously as a  
5 lawyer in California to the present. I am also admitted to and practiced before the  
6 United States District Courts for the Central, Northern and Eastern Districts of  
7 California as well as the United States Court of Appeals for the Ninth Circuit. I have  
8 appeared and argued cases before these District and Circuit Courts.  
9

10 17. For the past 25 years, I practiced in Los Angeles, California and more  
11 recently in Pasadena almost exclusively representing plaintiffs in civil class actions in  
12 state and federal courts. After leaving Jones, Day, Reavis & Pogue, from November  
13 1990 through December 2011 I worked for the Law Offices of Henry H. Rossbacher.  
14 From August 2013 through the present I have worked for the Law Offices of Neal J.  
15 Fialkow, Inc. I have been responsible for prosecuting class and representative cases  
16 involving state and federal securities fraud, ERISA, state and federal anti-trust  
17 violations, consumer fraud and California wage and hour violations. A number of these  
18 class cases helped developed the jurisprudence of the California Unfair Competition  
19 Law, False Advertising Law and the Consumer Legal Remedies Act. *See, e.g., Rose v.*  
20 *Bank of America, N.A.*, 57 Cal.4th 390 (2013); *Colgan v. Leatherman Tool Group,*  
21 *Inc.*, 135 Cal.App.4th 663 (2006); *Washington Mutual Bank v. Superior Court*, 75  
22 Cal.App.4th 777 (1999). For the past several years, I have represented employees  
23  
24  
25  
26  
27  
28

1 against employers involving wage and hour violations and representative claims under  
2 the California Private Attorney General Act. *See, e.g., Hernandez v. Ross Stores, Inc.*  
3 (2017) 7 Cal.App.5<sup>th</sup> 171.  
4

5 18. My current billing rate is \$750.00 per hour on class and representative  
6 cases at the Law Offices of Neal J. Fialkow. This hourly rate is competitive with  
7 prevailing rates charged by other plaintiffs' counsel in California with comparable skill  
8 and experience.  
9

10 19. I maintain time sheets for all work that I perform as a lawyer. I record  
11 contemporaneously the time I spend on each case including this case.  
12

13 I declare under penalty of perjury under the laws of the State of California and  
14 the United States of America that the foregoing is true and correct.  
15

16 Executed on September 15, 2017 at Pasadena, California.  
17

18 By:   
19

20 James S. Cahill

21 Attorneys for Plaintiff, Lawrence J. Peck  
22  
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28



# **EXHIBIT 1**

SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

LAWRENCE J. PECK, an individual and on )  
behalf of all other similarly aggrieved )  
employees, )

Plaintiff, )

versus )

Case No. RIC1411184

SWIFT TRANSPORTATION CO. ARIZONA, LLC, )  
and DOES 1 through 30, inclusive, )

Defendants. )

REPORTER'S TRANSCRIPT OF MOTION TO LIFT STAY

BEFORE THE HONORABLE JOHN D. MOLLOY

June 22, 2016

APPEARANCES:

For the Plaintiff:

LAW OFFICE OF NEAL J. FIALKOW

By: Neal J. Fialkow

James Cahill

215 North Marengo Ave., Third Floor  
Pasadena, California 91101

For the Defendant:

SHEPPARD MULLIN RICHTER & HAMPTON

By: Robert Mussig

333 South Hope Street, 43rd Floor  
Los Angeles, California 90071

Reported by:

TRINA N. FEHLMAN, CSR No. 10684

TRINA N. FEHLMAN, CSR, RPR, CRR

1 RIVERSIDE, CALIFORNIA; WEDNESDAY, JUNE 22, 2016

2 BEFORE THE HONORABLE JOHN D. MOLLOY

3 THE COURT: Peck versus Swift.

4 MR. CAHILL: Good morning, your Honor. James Cahill  
5 appearing for plaintiff and moving party.

6 MR. FIALKOW: Good morning, your Honor. Neal Fialkow,  
7 also appearing for plaintiff and moving party.

8 MR. MUSSIG: Good morning, your Honor. Robert Mussig  
9 for defendant.

10 THE COURT: All right. Good morning to all of you.  
11 This is a motion to, essentially, lift the stay as to the PAGA  
12 actions.

13 The Court is inclined to do so. And I will explain  
14 why. I understand that there's a federal action that's currently  
15 pending that involves some -- well, many of the same issues. But  
16 here is the main issue, and the reason that the Court is inclined  
17 to lift the stay.

18 The Court's inclined to lift the stay because the  
19 plaintiff is different. The plaintiff is the State of  
20 California. And yes, I understand that we -- we have a person  
21 who is representative who is -- that's Mr. Peck, is it -- yes, it  
22 is Mr. Peck. But he only acts as a surrogate for the State of  
23 California.

24 The other PAGA action in the related case has been  
25 sitting still for, what, six years now?

26 MR. MUSSIG: I -- I disagree that the PAGA claim --  
27 it's the *Burnell* case.

28 THE COURT: Yes.

1 MR. MUSSIG: The *Burnell* matter that's sitting in front  
2 of Judge Phillips has been sitting still.

3 THE COURT: She didn't certify the class.

4 MR. MUSSIG: She did not certify a class. But that's  
5 typical in a case where there are class claims and PAGA claims.

6 THE COURT: Sure.

7 MR. MUSSIG: Typically, the class action aspect of it  
8 will be addressed first. And then the PAGA aspect of it will be  
9 addressed. Often, and in plaintiff -- in fact in their  
10 opposition, cites several cases where that very thing happened.  
11 They cite those cases for the proposition that the federal courts  
12 are hostile towards PAGA. That's just untrue.

13 In those cases, what happens is that class claims are  
14 deemed uncertifiable. And then the Court addresses the PAGA  
15 claim. So the PAGA claim involves all the same issues as a class  
16 claim. So it's inaccurate to say it's been sitting still,  
17 because all the discovery that's been happening over the last six  
18 years -- the depositions, the written discovery, all of the  
19 disputes that go along with that -- all goes to the PAGA claim  
20 just as much as it goes to the class claims. And so that aspect  
21 of it will be dealt with.

22 I believe the *Burnell* action, the plaintiff has  
23 indicated they may seek to appeal the Court's denial of class  
24 certification. So that will be addressed first. But certainly,  
25 the PAGA claim has not been sitting.

26 THE COURT: That loud voice. Go ahead.

27 MR. MUSSIG: Certainly, the PAGA case has not been  
28 sitting still for six years. I don't think it's accurate to

1 characterize it as much because everything that's happened with  
2 respect to the class claims will eventually go to the PAGA claim.  
3 That's just the steps that these cases follow.

4 And so however you look at it, the plaintiff in this  
5 case, whether it's Mr. Peck or whether it's Mr. Peck acting as a  
6 surrogate for the State, in which case the State is the real  
7 plaintiff, has another case against this defendant, this same  
8 defendant.

9 THE COURT: No, the State doesn't. Well, the State.

10 MR. MUSSIG: Absolutely the State of California has  
11 another case --

12 THE COURT: PAGA.

13 MR. MUSSIG: -- has another PAGA case in the *Burnell*  
14 action pending against this defendant. The State wouldn't be  
15 permitted to pursue two different actions based on the same  
16 theories. The claims overlap. The claims in this case are  
17 minimum wages, overtime, waiting time penalties, reimbursement,  
18 pay stubs. The claims in the *Burnell* case are minimum wages,  
19 meal and rest, reimbursement, pay stubs, wait time penalties.  
20 The claims overlap.

21 This plaintiff, even if you assume it is the State of  
22 California, has another case that it is currently prosecuting,  
23 actively prosecuting against this same defendant. And so that  
24 just can't be.

25 THE COURT: When was the *Burnell* case filed?

26 MR. CAHILL: It was filed in 2010, your Honor.

27 THE COURT: Okay. And our case is filed in 2014,  
28 November.

1 MR. CAHILL: Right.

2 MR. MUSSIG: Yes, several years after the *Burnell* case.  
3 Several years of litigation in the *Burnell* case: discovery,  
4 discovery disputes that the parties have gone through,  
5 depositions.

6 The problem with prosecuting two separate cases, with  
7 the same plaintiff prosecuting two separate cases -- I mean,  
8 there are several. One is -- is the, sort of, unsavory aspect of  
9 trying to get two bites at the apple. But really, the problem,  
10 from our perspective, is the duplicative nature of it.

11 THE COURT: Well, in terms of -- in the terms of the  
12 class actions versus the PAGA actions, they do essentially get  
13 two bites at the apple.

14 MR. MUSSIG: I agree in the same case, though, not in  
15 two separate cases. And so what you have is --

16 THE COURT: Except that it's quite often that we have  
17 to send the class action off to arbitration because there's a  
18 binding arbitration agreement that doesn't bind the PAGA cause of  
19 action.

20 MR. MUSSIG: Yeah. But in that case what happens,  
21 under California case law, the PAGA claim is stayed.

22 THE COURT: It can be stayed. It's not absolutely  
23 stayed.

24 MR. MUSSIG: I know there are cases that say it should  
25 be stayed.

26 THE COURT: They say it should be, but it's not  
27 mandatory.

28 MR. MUSSIG: I suppose there's not a requirement,

1 but --

2 THE COURT: But even if it's stayed, the outcome of  
3 the -- the outcome of the underlying class action does not  
4 control the outcome of the PAGA -- or the PAGA cause of actions.

5 MR. MUSSIG: But the outcome of the underlying  
6 arbitration can. Absolutely. That's one of the reasons the  
7 cases say the PAGA claim should be stayed. Because if in the  
8 arbitration it is determined that the plaintiff doesn't have a  
9 claim, was not injured, in other words, is not an aggrieved  
10 employee, he or she is incapable of being a PAGA representative.

11 And so that -- that's exactly -- that's exactly the  
12 outcome we're asking for here.

13 THE COURT: But that's one of -- that is one possible  
14 outcome, but not all -- okay. Go ahead.

15 MR. MUSSIG: So we're asking for the exact same relief  
16 here: A stay while the *Burnell* PAGA claim is adjudicated.

17 I suppose if -- if the *Burnell* PAGA claim --

18 THE COURT: *Burnell* PAGA claim, then we're six years  
19 into it. We're six years into that lawsuit and nothing's  
20 happened; right?

21 MR. MUSSIG: I don't think that's accurate.

22 THE COURT: Okay. Go ahead.

23 MR. MUSSIG: Absolutely a lot has happened, and that's  
24 precisely why it should be stayed in this case, because all the  
25 discovery has been taken in the *Burnell* case. And so --

26 THE COURT: When is it going to trial?

27 MR. MUSSIG: I don't believe there's a trial date. But  
28 what the next thing that will be briefed is the viability of the

1 PAGA claim.

2 THE COURT: All right.

3 MR. MUSSIG: So at a minimum, I think, the stay should  
4 remain in effect until that occurs, until Judge Phillips has  
5 ruled. Or I suppose it's possible, as plaintiffs point out in  
6 their papers, the PAGA claim could be dismissed. I don't think  
7 that's very likely.

8 I think the most likely outcome, for practical purposes  
9 as you and I probably know, is they will now pursue the PAGA  
10 claim and Judge Phillips will be asked to adjudicate that. And  
11 so the stay should remain in effect, at least, until Judge  
12 Phillips has an opportunity to do that.

13 THE COURT: Is a motion set for that, for her to make a  
14 determination?

15 MR. MUSSIG: There's nothing set, I agree. But it -- I  
16 mean, I guess the stay could remain in effect for -- what we  
17 would request, at least, is another six months to allow that to  
18 develop and see whether or not that goes anywhere.

19 THE COURT: If we do it for another six months, then  
20 we're -- we're in the seventh year of that other case.

21 MR. MUSSIG: I agree. And -- and I am not here to,  
22 sort of, opine as to why Judge Phillips believes -- well, there's  
23 been a lot that happened -- that's happened in that case.

24 THE COURT: And I won't comment.

25 MR. MUSSIG: Yeah. In that case there was a change in  
26 the law, basically.

27 THE COURT: Okay.

28 MR. MUSSIG: There were meal and rest period claims in



1 that case, which were -- I don't know if they were dismissed. I  
2 believe they were dismissed. There was another case that went up  
3 to the Ninth Circuit. They said that meal and rest period claims  
4 should not be dismissed on that basis. They came back down to  
5 Judge Phillips. So there were appeals, stays along those lines.

6 THE COURT: Sure.

7 MR. MUSSIG: But a lot of discovery's been taken in  
8 that case -- the depositions, written discovery -- all in advance  
9 of the class certification hearing and the class certification  
10 briefing, which now will be used in connection with the PAGA  
11 claim.

12 THE COURT: Here's -- here's -- my quandary is I have  
13 no -- I don't see the light at the end of the tunnel on even that  
14 PAGA claim. I don't see that it's scheduled, that it is  
15 scheduled for determination on the merits or for a determination  
16 of the viability of the determination on the merits, neither one.

17 MR. MUSSIG: I understand it's not scheduled, but it is  
18 being actively litigated. Right now the focus of the case is  
19 slightly different. The focus of the case is the classification  
20 aspect of it. But it absolutely is being litigated. All of the  
21 discovery goes to the PAGA claim, because the PAGA claim is based  
22 on all of the same theories that they sought class certification  
23 on. Similar to this case where there's a --

24 THE COURT: But mostly -- most cases like this are that  
25 way; right? Almost all of the discovery overlaps.

26 MR. MUSSIG: Oh, yeah, absolutely. I agree.

27 THE COURT: And that's why we -- and I will tell you,  
28 in this courtroom, I typically stay PAGA claims if -- if I'm

1 sending the class participants off to arbitrate. I will  
2 typically do that. But I have a pain threshold as cases start to  
3 get old. I'm -- I hate seeing cases get old. I despise it for a  
4 number of reasons. Not the least of which, this county has a  
5 still quite rich history of having tremendous backlogs, both on  
6 the criminal side and on the civil side. And we've done a --  
7 we've done -- we've made great strides in reducing those  
8 backlogs. So when a case like this one starts to approach two  
9 years, it starts hitting the alarm bells with me.

10 All right. Let me hear from the other side for now.  
11 Go ahead.

12 MR. FIALKOW: Just a few things, your Honor. This is  
13 Neal Fialkow.

14 THE COURT: Thank you, sir.

15 MR. FIALKOW: I think the starting point is 583(b). If  
16 we had -- if the *Burnell* case was here, five years would be gone,  
17 the case would be over. There'd be no excuse.

18 Now, the federal -- the federal system does not have a  
19 583(b). It can go on and on ad infinitum. And at some point in  
20 time, a case really needs to get tried. It's not fair to  
21 litigants to have a case sitting there for years and years and  
22 years, and the attorneys feel like a potted plant, and the Court  
23 feels like, what are we doing here?

24 And so everybody loses on the justice end. But even  
25 beyond that, let's -- let's take a look why holding it in  
26 abeyance really means nothing. Because counsel makes the  
27 assumption that the two cases are the same, and they are not.  
28 Theories of a case are extremely important. Theories of a case

1 determine outcome. Here, the class action that was determined  
2 was a loser to the federal court.

3 Clearly, you know, I don't know what's going to happen  
4 on the -- on the -- on the PAGA case. The Court could just let  
5 it sit --

6 THE COURT: You're speaking of the *Burnell* case now.

7 MR. FIALKOW: I'm talking about the *Burnell* case.

8 THE COURT: Okay. Go ahead.

9 MR. FIALKOW: You know, Judge Phillips could let it sit  
10 forever. She could revert it back. She could do nothing. But I  
11 can tell you this: Our claims are completely different because  
12 they have different theories. So at the end of the day, even if  
13 you held it in abeyance and another year goes by, six months goes  
14 by, whatever the case may be, we're going to at some point in  
15 time have this conversation with you, Our claims are different.  
16 And we have the right to pursue them. I mean, you can't just  
17 say, Oh, PAGA case over in federal court, take a hike, Counsel,  
18 your case is over. I mean at some point in time, there's going  
19 to have to be a ruling. And we're going to get into the  
20 analytics of this claim.

21 And so my thought is, let's use our time wisely.  
22 Let -- let us have the discovery. Let us have some discovery,  
23 and we'll show you the analytics.

24 And then at some point in time, you know, even if Judge  
25 Phillips dismissed the case, you're going to have to make a  
26 decision whether or not it's res judicata, what it means.  
27 Because I -- I -- you know, I've tried a class action case. I  
28 think everybody will agree that PAGA cases is a whole different

1 creature. And everyone's trying to figure out what to do. But  
2 one thing is clear: The action belongs by the State. It was  
3 emergency legislation because the legislature felt that the  
4 administrative agency itself, the LWDA, didn't have enough  
5 assets. And it was trying to get more money into the coffers and  
6 trying to move things along.

7 By holding a case in abeyance for several years kind of  
8 frustrates the legislative intent. Especially when you have  
9 Judge Phillips holding a case, which is really a State action.  
10 And in fact, one thing that I've done in the past, because I do a  
11 lot of these, is I never file my PAGA actions within the claim  
12 itself of the class action. Because I don't want it removed on a  
13 pendente lite basis.

14 So to me, it just makes sense that we do some  
15 discovery. And I would suggest this. You say, okay, Counsel,  
16 give the outgoing company what you got on *Burnell*. Let them take  
17 a look at it. I -- I am not trying to make duplicative discovery  
18 here. I will use the time wisely. If -- if counsel says we're  
19 being duplicative, I have no problem going forward with a case  
20 management plan.

21 THE COURT: That's a different discussion.

22 MR. FIALKOW: Of course it is.

23 THE COURT: That's a discussion that's going to occur  
24 if I actually lift the stay. And I would absolutely encourage  
25 you to have those types of discussions informally to try and  
26 obviate -- well, try and reduce the expense of discovery.  
27 Especially if it's already been propounded and there is a  
28 tremendous amount of overlapping information.

1 But I don't know that for certain. I do understand  
2 that there are some similarity of parties in the two actions.

3 All right. Counsel, I'm still inclined to lift the  
4 stay. I'm not inclined to allow a case that sat here for longer  
5 than two years without something happening on it, without -- if  
6 you told me, We are set for a hearing in front of Judge Phillips  
7 next week or even next month, we're set for it, it's been  
8 briefed, she's going to rule on it, I probably would put this  
9 over, this motion over, until after that so we could see what  
10 effect, if any, that her -- her determination had on it. But I  
11 don't have any of that. I don't have any light at the end of the  
12 tunnel for me.

13 MR. MUSSIG: Well, I would request, then, that the stay  
14 remain in effect for at least three more months. We can come  
15 back in -- or two months.

16 THE COURT: I'm not going to do that.

17 MR. MUSSIG: And we can --

18 THE COURT: No. If you had something set, I would.  
19 But you don't. I'm not going to.

20 I understand your frustration. I understand your  
21 concerns. But I have to, at the end of the day, have some belief  
22 that -- that something outcome-determinative is going to happen,  
23 and I don't. I believe it will happen eventually. But I don't  
24 have -- I don't have any idea of when and if it will happen.  
25 And --

26 MR. MUSSIG: I think that's -- I mean, that's a big  
27 part of the problem, is it will happen eventually. And because  
28 the parties are the same, the party in that case is the State,

1 the party in this case is the State, it doesn't matter whether  
2 the theories are different.

3 THE COURT: We may have a determination in this lawsuit  
4 long before we have one in that too. That could happen. And  
5 then you can litigate in federal court what effect, if any, this  
6 Court's determinations have on its lawsuit.

7 And I understand that that's one of the big problems of  
8 duplicative overlapping litigations. It's one of the  
9 proposition -- it's one of the vagaries of having two different  
10 forums deal with the matter. But I do have a lawsuit that's been  
11 properly filed in this jurisdiction. It has been going on  
12 since -- well, it has been around since November of 2014. I'm  
13 not staying it any longer. The stay is lifted.

14 MR. MUSSIG: Can we at least do -- I agree the parties  
15 can meet and confer about some sort of discovery plan. Here's  
16 what I'm anticipating. Any discovery they serve, we're going to  
17 object as duplicative. This party has already served that  
18 discovery. Maybe not in this case, but a separate case. And  
19 it's just going to lead to a bunch of disputes.

20 THE COURT: For right now I'm going to encourage you to  
21 meet and confer. I'm -- you're encouraged to meet and confer.  
22 I'm not going to make any rulings without a motion in front of  
23 me. If you want to -- if we need to have a case management plan,  
24 we can talk about that. But first, we're going to let the  
25 informal process go.

26 MR. MUSSIG: Oh, I'm not suggesting any sort of  
27 discovery rulings. What I'm suggesting, I suppose, is somewhat  
28 analogous to a Rule 26 conference in federal court where --

1 THE COURT: I'm lost.

2 MR. MUSSIG: Oh, I apologize. Where we can set a CMC  
3 or a case management -- a case management conference, status  
4 conference, something along those lines in this case. And the  
5 parties can meet and confer and try to come to some sort of  
6 agreement as to what discovery is going to look like.

7 THE COURT: Oh, case management conference I'll set for  
8 30 days. I'll set it out for 30 days.

9 THE CLERK: We'll go July 28th.

10 THE COURT: July 28th, 8:30 a.m., this department.

11 MR. CAHILL: Excuse me, your Honor, we didn't hear what  
12 you just said.

13 THE COURT: Case management conference.

14 MR. FIALKOW: Ah.

15 MR. CAHILL: So you're setting a case management  
16 conference, but you're lifting the stay.

17 THE COURT: Correct.

18 MR. CAHILL: And the --

19 THE COURT: So I'll see you back in 30 days so we can  
20 then -- then you'll let me know what's going on with your  
21 discovery efforts.

22 MR. CAHILL: And we don't have -- your Honor, we don't  
23 have an answer from the defendant. So we expect an answer from  
24 the defendant by that time.

25 THE COURT: All right. Well -- or a surrogate.

26 MR. CAHILL: Right.

27 THE COURT: Right? It's an answer or a challenge. I  
28 don't -- we'll see. All right. Thirty days.

1 MR. FIALKOW: Thank you so much.

2 MR. CAHILL: Thank you, your Honor.

3 MR. MUSSIG: Is that at 8:30, your Honor?

4 THE COURT: It is. 8:30 a.m., this department.

5 MR. CAHILL: Notice is waived, your Honor?

6 THE COURT: Notice waived?

7 MR. MUSSIG: Notice waived, your Honor.

8 MR. CAHILL: It was July 28?

9 THE COURT: Correct. July 28, 8:30 a.m., this  
10 department.

11 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

LAWRENCE J. PECK, an individual and on )  
behalf of all other similarly aggrieved )  
employees, )  
 )  
Plaintiff, )  
 )  
versus ) Case No. RIC1411184  
 )  
SWIFT TRANSPORTATION CO. ARIZONA, LLC, )  
and DOES 1 through 30, inclusive, )  
 )  
Defendants. )  
 )

I, Trina N. Fehlman, Certified Shorthand Reporter No. 10684, hereby certify:

On 06/22/16, in the county of Riverside, state of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-entitled case, pages 1-14, and that the foregoing is a true and accurate transcription of my stenotype notes, and is the whole thereof.

DATED: Riverside, California, July 12, 2016.

\_\_\_\_\_  
Trina N. Fehlman, CSR No. 10684

TRINA N. FEHLMAN, CSR, RPR, CRR

# **EXHIBIT 2**

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

CASE TITLE: Peck v. Swift Transportation	Department 10
CASE NO.: RIC 1411184	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE
DATE: May 23, 2017	MAY 25 2017
CASE MANAGEMENT ORDER - PAGA CLAIMS	
L. Hall	

Unless and until ordered otherwise, the following provisions shall govern the management of this case. Plaintiff shall serve a copy of this order on all parties and shall file proof of service of the same.

A. Case Management

1. The Court provisionally finds that this is a complex case. (Cal. Rules of Court, rules 3.400(c)(6) and 3.403(b).) The clerk shall impose fees accordingly. The court will entertain objections to this designation at the next Case Management Conference/Status hearing.

2. The Court finds that this case involves exceptional circumstances that are likely to prevent this case from meeting the goals and deadlines set by California Rules of Court, rule 3.713(b). Accordingly, this case is exempt from those case disposition time goals. (*Id.*, rule 3.714(c)(1).) With the input from the parties, the Court shall develop a case progression plan with the goal of disposing of the case within three years. (*Id.*, rule 3.714(c)(2).)

3. This case has been assigned to Department 10 for all purposes, including case management, law and motion, and trial.

4. Five days before the initial case management conference, the parties shall file a joint case management statement (1) addressing the issues set forth in California Rules of Court, Rule 3.750; (2) proposing a case progression plan, which shall include a mediation schedule, a proposed discovery schedule, including dates for completion, and a proposed trial date; and (3) identifying any other issues any party would like to discuss with the Court.

5. Five days before any subsequent case management or status conference, the parties shall file a joint case management statement (1) addressing the status of the case, including compliance with the case progression plan, the progress of discovery and mediation and (2) identifying any issues the parties would like to discuss with the Court.

6. The parties shall not file Case Management Statements on Judicial Council form CM-110.

7. **Until otherwise ordered, the lead counsel shall personally appear at all case management/status conferences. Court Call is not permitted.**

B. Pleadings

1. Before filing a demurrer, a motion to strike, a motion for judgment on the pleadings, or any other challenge to an opponent's pleading, the parties shall meet and confer to determine whether the challenge is arguably meritorious and, if so, whether the parties will stipulate to leave to amend being granted to allow the pleading to be amended in an attempt to cure the asserted defect. Additionally, if any party believes that its pleadings require amendment, before filing any motion to amend, the parties shall meet and confer to determine whether the parties will stipulate to leave to amend being granted.

By "meet and confer," the Court means that counsel for the parties shall meet with each other, either by telephone or in person, to discuss any arguable defects in the pleadings, and whether those potential defects can be resolved or diminished by amendment. Merely sending a letter to opposing counsel does not constitute a meeting, and thus does not comply with this order.

2. Any challenge to a pleading, and any motion for leave to amend a pleading, must be accompanied by a declaration describing those meet-and-confer efforts and establishing that such a stipulation to amend was sought without success.

C. Discovery

1. No discovery motions may be filed without leave of court. If the parties are unable to resolve a discovery dispute, then counsel shall contact the clerk of this department to schedule an informal conference at which the court will discuss the dispute with counsel and, if not resolved to the parties' satisfaction, will consider any request for leave to file a formal motion. The conference may be conducted by telephone or in person, as counsel prefer.

D. Mediation

1. The Court expects the parties to engage in private mediation at the earliest practicable time. The "earliest practicable time" means before the parties commence formal discovery but after each party has obtained, through informal means, sufficient information from the opposing party(s) so as to be able to engage in meaningful mediation.

2. If the parties do not agree to engage in private mediation, the parties shall explain their reasons to the Court in their joint case management statement.

E. Court Approval of PAGA Settlement

Pursuant to Labor Code §2699, subd. (l)(2), the Court is required to review and approve any settlement of a civil action involving recovery of civil penalties under the Private Attorney General Act (PAGA). To facilitate that review and to assist the Court in deciding whether the settlement should be approved, the parties shall comply with the following:

1. Any request to approve a PAGA settlement shall be made by a properly noticed motion.

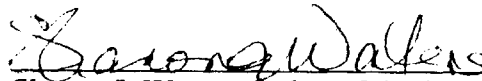
2. To assist the Court in determining whether imposition of the maximum civil penalty would be unjust, arbitrary, oppressive or confiscatory (Lab. Code, § 2699, subd. (e)(2); *Amaral vs. Cintax Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1213-1214), the motion shall provide the Court with argument and evidence of each of the following:

- a. The nature of the alleged violations.
- b. The number of alleged individual violations, including both the length of the relevant employment period and the number of employees allegedly employed during that period.
- c. The total amount of penalties for which the defendant is potentially liable should those allegations are proven.
- d. The extent to which the alleged violations would be likely to be found true at trial, considering the weight of the evidence, the clarity of the applicable law, and the strength of any factual or legal defense likely to be asserted by the defendant.
- e. The nature and extent of the discovery or other investigation undertaken by the plaintiff to estimate the likelihood of proving those allegations at trial.
- f. Whether the defendant's violations were knowing and intentional within the meaning of Labor Code section 226, subdivision (e)(1).
- g. The total amount of penalties for which the defendant would be likely to be found liable at trial.
- h. Any other facts that tend to suggest that the imposition of the total amount of statutory penalties for which the defendant would be likely to be found liable at trial would be unjust, arbitrary and oppressive, or confiscatory.
- i. How the amount of the agreed-upon penalties was calculated or otherwise arrived at.

- j. Whether the parties utilized the services of any neutral party to mediate this dispute.
- k. Any other factors that are material to a determination that the amount of the agreed-upon penalties is fair.

3. Any request to approve an award of attorney fees and costs may be included as part of the motion to approve PAGA settlement and shall be supported by argument and evidence of the total amount of time spent by counsel, a detailed description of the work actually performed and the time charged for each task performed, the reasonableness of the fees charged and a detailed description of the costs actually incurred.

- 4. Any release of claims shall bind ONLY the named representative plaintiff.

  
Sharon J. Waters, Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE  
4050 Main Street - 2nd Floor  
Riverside, CA 92501  
www.riverside.courts.ca.gov

CLERK'S CERTIFICATE OF MAILING

LAWRENCE J PECK

vs.

CASE NO. RIC1411184

SWIFT TRANSPORTATION CO ARIZONA LLC

TO: LAW OFFICE OF NEAL J FIALKOW INC  
215 NORTH MARENGO AVE  
THIRD FLOOR  
PASADENA CA 91101

I certify that I am currently employed by the Superior Court of California, County of Riverside and I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the attached Case management Order on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

Dated: 05/30/17

by: LETICIA HALL, Deputy Clerk

# EXHIBIT 3



1 NEAL J. FIALKOW (SBN 74385)  
nfialkow@pacbell.net  
2 JAMES S. CAHILL (SBN 70353)  
jscahilllaw@aol.com  
3 LAW OFFICE OF NEAL J. FIALKOW, INC.  
215 N. Marengo Ave., 3rd Floor  
4 Pasadena, CA 91101  
Telephone: (626) 584-6060  
5 Facsimile: (626) 584-2950

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

AUG 08 2017

M. Criel

6  
7 Attorney for Plaintiff, Lawrence Peck, as an individual,  
for himself, and on behalf of all others similarly situated

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **FOR THE COUNTY OF RIVERSIDE**

10 LAWRENCE J. PECK, an individual and on  
11 behalf of all other similarly aggrieved  
12 employees,

13  
14 Plaintiff,

15 vs.

16 SWIFT TRANSPORTATION CO. ARIZONA,  
17 LLC and DOES 1 through 30, inclusive,

18  
19 Defendants.

Case No. RIC1411184

*[For All Purposes Assigned to Hon.  
Judge Sharon J. Waters, Dept. 10]*

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION (1) TO COMPEL FURTHER  
RESPONSES TO SPECIAL  
INTERROGATORIES (SET ONE)  
AGAINST DEFENDANT AND (2) FOR  
ORDER AWARDING MONETARY  
SANCTIONS AGAINST DEFENDANT AND  
ITS LAWYERS IN THE SUM OF \$6,432.50;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; AND DECLARATIONS OF  
NEAL J. FIALKOW AND JAMES S.  
CAHILL WITH EXHIBITS**

**Reservation No.: RES70062**

Hearing: September 11, 2017  
Time: 8:30 a.m.  
Dept.: 10

Complaint Filed: November 20, 2014  
FAC Filed: December 3, 2014  
Trial Date: August 17, 2018

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24 **By Fax**

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28 **PLAINTIFF'S NOTICE OF MOTION (1) TO COMPEL FURTHER RESPONSES TO SPECIAL  
INTERROGATORIES (SET ONE) AGAINST DEFENDANT AND (2) FOR ORDER AWARDING MONETARY  
SANCTIONS AGAINST DEFENDANT AND ITS LAWYERS IN THE SUM OF \$6,432.50; MEMORANDUM OF  
POINTS AND AUTHORITIES; AND DECLARATIONS OF NEAL J. FIALKOW AND JAMES S. CAHILL WITH  
EXHIBITS**

# **EXHIBIT 4**

1 NEAL J. FIALKOW (SBN 74385)  
nfialkow@pacbell.net  
2 JAMES S. CAHILL (SBN 70353)  
jscahilllaw@aol.com  
3 LAW OFFICE OF NEAL J. FIALKOW, INC.  
215 N. Marengo Ave., 3rd Floor  
4 Pasadena, CA 91101  
Telephone: (626) 584-6060  
5 Facsimile: (626) 584-2950

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

AUG 21 2017

E. Rodriguez

6  
7 Attorney for Plaintiff, Lawrence Peck, as an individual,  
for himself, and on behalf of all others similarly situated

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **FOR THE COUNTY OF RIVERSIDE**

10 LAWRENCE J. PECK, an individual and on  
11 behalf of all other similarly aggrieved  
employees,

12  
13  
14 Plaintiff,

15 vs.

16 SWIFT TRANSPORTATION CO. ARIZONA,  
17 LLC and DOES 1 through 30, inclusive,

18  
19 Defendants.

Case No. RIC1411184

*[For All Purposes Assigned to Hon.  
Judge Sharon J. Waters, Dept. 10]*

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION (1) TO COMPEL PRODUCTION  
OF DOCUMENTS AT DEPOSITION  
AGAINST DEFENDANT AND (2) FOR  
ORDER AWARDED MONETARY  
SANCTIONS AGAINST DEFENDANT AND  
ITS LAWYERS IN THE SUM OF  
\$10,462.50; MEMORANDUM OF POINTS  
AND AUTHORITIES; AND  
DECLARATIONS OF NEAL J. FIALKOW  
AND JAMES S. CAHILL WITH EXHIBITS**

**[CONCURRENTLY FILED WITH  
PLAINTIFF'S SEPARATE STATEMENT]**

**Reservation No.: RES70419**

Hearing: September 19, 2017

Time: 8:30 a.m.

Dept.: 10

Complaint Filed: November 20, 2014

FAC Filed: December 3, 2014

Trial Date: August 17, 2018

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28 **PLAINTIFF'S NOTICE OF MOTION AND MOTION (1) TO COMPEL PRODUCTION OF DOCUMENTS AT  
DEPOSITION AGAINST DEFENDANT AND (2) FOR ORDER AWARDED MONETARY SANCTIONS AGAINST  
DEFENDANT AND ITS LAWYERS IN THE SUM OF \$10,462.50; MEMORANDUM OF POINTS AUTHORITIES;  
AND DECLARATIONS OF NEAL J. FIALKOW AND JAMES S. CAHILL WITH EXHIBITS**

# EXHIBIT 5

NEAL J. FIALKOW  
ATTORNEY AT LAW  
A PROFESSIONAL LAW CORPORATION  
215 NORTH MARENGO AVENUE, 3<sup>RD</sup> FLOOR  
PASADENA, CALIFORNIA 9101  
(626) 584-6060  
FAX (626) 584-2950

September 1, 2017

**SENT VIA EMAIL AND U.S. MAIL**

Robert Mussig, Esq.  
Sheppard, Mullin, Richter & Hampton LLP  
333 South Hope Street, 43<sup>rd</sup> Floor  
Los Angeles, California 90071-1422

Re: ***Peck v. Swift Transportation Co. Arizona, LLC***  
**Riverside County Superior Court, Case No. RIC1411184**

Dear Robert:

As you know, Swift's employee Sarah Koogle's deposition was set for September 4<sup>th</sup> to be taken in Phoenix, Arizona at 9:00 a.m. This will confirm that Swift will not be producing Sarah Koogle at said date and time given that the matter has been removed to Federal Court and the state action has been automatically stayed.

Very Truly Yours,



Neal J. Fialkow

CC: James S. Cahill, Esq., Paul S. Cowie, Esq.

# **EXHIBIT 6**

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
2 PAUL S. COWIE, Cal. Bar No. 250131  
3 pcowie@sheppardmullin.com  
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8 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
9 ROBERT MUSSIG, Cal. Bar No. 240369  
10 rmussig@sheppardmullin.com  
11 HILARY A. HABIB, Cal. Bar No. 293431  
12 hhabib@sheppardmullin.com  
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15 Telephone: 213.620.1780  
16 Facsimile: 213.620.1398

17 Attorneys for Defendant  
18 SWIFT TRANSPORTATION CO. OF ARIZONA.  
19 LLC

20  
21  
22 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
23 FOR THE COUNTY OF RIVERSIDE

24 LAWRENCE J. PECK, an individual and on  
25 behalf of all other similarly aggrieved  
26 employees,

27 Plaintiff,

28 v.

29 SWIFT TRANSPORTATION CO.  
30 ARIZONA, LLC and DOES 1 through 30,  
31 inclusive,

32 Defendants.

Case No. RIC 1411184

Hon. Sharon J. Waters

**DEFENDANT SWIFT  
TRANSPORTATION CO. OF ARIZONA,  
LLC'S RESPONSES TO PLAINTIFF'S  
SPECIAL INTERROGATORIES, SET  
ONE**

Complaint Filed: November 20, 2014  
FAC Filed: December 3, 2014  
Trial Date: None Set

33 PROPOUNDING PARTY: LAWRENCE J. PECK

34 RESPONDING PARTY: SWIFT TRANSPORTATION CO. OF ARIZONA, LLC

35 SET NO.: ONE

36 NOS.: 1-13

1 Defendant Swift Transportation Co. of Arizona, LLC hereby responds to the  
2 Special Interrogatories, Set One, served by Plaintiff Lawrence J. Peck as follows:

3 I.

4 **PRELIMINARY STATEMENT**

5 These responses are made solely for the purposes of, and in relation to, this lawsuit.  
6 Each response is subject to all appropriate objections that would require the exclusion of any  
7 information produced at the time of trial, including, but not limited to, objections as to  
8 competency, relevancy, confidentiality, and admissibility. All such objections and grounds  
9 therefore are reserved and may be made at the time of trial.

10 Defendant has not yet completed its investigation of the facts relating to this case,  
11 has not fully completed discovery in this matter, and has not fully completed preparation for trial.  
12 Accordingly, all of the responses below are based only on such information that is presently  
13 available to and specifically known to Defendant at this time. Furthermore, these responses  
14 disclose only those contentions that presently occur to Defendant.

15 It is anticipated that further discovery, independent investigation, legal research and  
16 analysis will supply additional facts, add meaning to the known facts, and establish entirely new  
17 factual and legal contentions, all of which may lead to substantial additions to, changes in, and  
18 variations from the responses set forth below. These responses are given without prejudice to  
19 Defendant's right to produce evidence of any subsequently discovered facts or documents or other  
20 tangible things that Defendant may later discover or recall. Accordingly, Defendant hereby  
21 reserves the right to add to, modify, or otherwise change or amend the responses below as  
22 additional facts are ascertained, analysis and contentions are made, and legal research is  
23 completed.

24 The responses below are made in a good faith effort to supply as much factual  
25 information and specification of legal contentions as is presently known, but should in no way be  
26 to the prejudice of Defendant in relation to further discovery, research or legal analysis.

27 No incidental or implied admissions are intended by the responses herein. The fact  
28 that Defendant answered or objected to any interrogatory should not be taken as an admission that



1 Defendant accepts or admits the existence of any "facts" set forth or assumed by such  
2 interrogatory. The fact that Defendant has answered part or all of an interrogatory is not intended  
3 to be, and should not be construed as, a waiver by Defendant of any part of any objection to such  
4 interrogatory.

5 This preliminary statement is incorporated into each response below.

6 **II.**

7 **GENERAL OBJECTIONS**

8 Each response below is subject to the following general objections. These general  
9 objections form a part of each response and are set forth here to avoid duplication and repetition  
10 caused by restating them in each response. These general objections may be specifically  
11 interposed for the purpose of clarity in response to an individual interrogatory. However, the  
12 failure to specifically incorporate any general objection in a particular response should not be  
13 construed as a waiver of the objection.

14 1. **SCOPE:** Defendant objects to each interrogatory to the extent it is vague,  
15 overly broad, oppressive, unintelligible, harassing or vexatious; imposes undue burden or expense;  
16 seeks information not apparently relevant to the claims or defenses of any party nor likely to lead  
17 to the discovery of admissible evidence; and/or seeks information not within Defendant's  
18 possession, custody or control.

19 2. **PRIVILEGE:** Defendant objects to each interrogatory to the extent it calls  
20 for information protected by the attorney-client privilege, the work product doctrine or any other  
21 privilege or protection from discovery.

22 3. **UNDULY BURDENSOME:** Defendant objects to each interrogatory to  
23 the extent it seeks to impose burdens and obligations not contemplated by or exceeding the  
24 requirements of the California Code of Civil Procedure.

25 4. **CONFIDENTIAL INFORMATION:** Defendant objects to each  
26 interrogatory to the extent it seeks disclosure of: (1) Information that would violate the privacy  
27 rights of individuals; or (2) confidential business or commercial information, trade secrets, and/or  
28 proprietary information, including financial information, of Defendant and/or third parties.

These general objections are incorporated into each response below.

**RESPONSE TO SPECIAL INTERROGATORIES**

**SPECIAL INTERROGATORY NO. 1:**

For the period of October 18, 2013 through December 31, 2013 what were the number of Swift non-exempt truck drivers that were compensated with a mileage based pay plan whose earning statements showed them to have a California address and that California state tax was being deducted.

**RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

By this reference, Defendant incorporates its Preliminary Statement and General Objections set forth above. Defendant objects to this interrogatory on the ground that it is overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as not containing the term "non-exempt."

Subject to and without waiving the forgoing objections, Defendant responds as follows:  
1,458 drivers.

**SPECIAL INTERROGATORY NO. 2:**

For the period of October 18, 2013 through December 31, 2013 what were the total number of earning statements issued by Swift for all Swift non-exempt truck drivers that were compensated with a mileage based pay plan whose earning statements showed them to have a California address and that California state tax was being deducted.

**RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

By this reference, Defendant incorporates its Preliminary Statement and General Objections set forth above. Defendant objects to this interrogatory on the ground that it is overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and

1 federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as  
2 not containing the term "non-exempt."

3 Subject to and without waiving the forgoing objections, Defendant responds as follows:  
4 Approximately 19,275 earning statements.

5 **SPECIAL INTERROGATORY NO. 3:**

6 For the period of January 1, 2014 through December 31, 2014 what were the number of  
7 Swift non-exempt truck drivers that were compensated with a mileage based pay plan whose  
8 earning statements showed them to have a California address and that California state tax was  
9 being deducted.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

11 By this reference, Defendant incorporates its Preliminary Statement and General  
12 Objections set forth above. Defendant objects to this interrogatory on the ground that it is  
13 overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this  
14 interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-  
15 exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and  
16 federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as  
17 not containing the term "non-exempt."

18 Subject to and without waiving the forgoing objections, Defendant responds as follows:  
19 3,610 drivers.

20 **SPECIAL INTERROGATORY NO. 4:**

21 For the period January 1, 2014 through December 31, 2014 what were the total number of  
22 earning statements issued by Swift for all Swift non-exempt truck drivers that were compensated  
23 with a mileage based pay plan whose earning statements showed them to have a California address  
24 and that California state tax was being deducted.

25 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

26 By this reference, Defendant incorporates its Preliminary Statement and General  
27 Objections set forth above. Defendant objects to this interrogatory on the ground that it is  
28 overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this

1 interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-  
2 exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and  
3 federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as  
4 not containing the term "non-exempt."

5 Subject to and without waiving the forgoing objections, Defendant responds as follows:

6 Approximately 124,922 earning statements.

7 **SPECIAL INTERROGATORY NO. 5:**

8 For the period of January 1, 2015 through December 31, 2015 what were the number of  
9 Swift non-exempt truck drivers that were compensated with a mileage based pay plan whose  
10 earning statements showed them to have a California address and that California state tax was  
11 being deducted.

12 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

13 By this reference, Defendant incorporates its Preliminary Statement and General  
14 Objections set forth above. Defendant objects to this interrogatory on the ground that it is  
15 overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this  
16 interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-  
17 exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and  
18 federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as  
19 not containing the term "non-exempt."

20 Subject to and without waiving the forgoing objections, Defendant responds as follows:

21 3,716 drivers.

22 **SPECIAL INTERROGATORY NO. 6:**

23 For the period of January 1, 2015 through December 31, 2015 what were the total number  
24 of earning statements issued by Swift for all Swift non-exempt truck drivers that were  
25 compensated with a mileage based pay plan whose earning statement showed them to have a  
26 California address and that California state tax was being deducted.

27  
28

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

2 By this reference, Defendant incorporates its Preliminary Statement and General  
3 Objections set forth above. Defendant objects to this interrogatory on the ground that it is  
4 overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this  
5 interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-  
6 exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and  
7 federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as  
8 not containing the term "non-exempt."

9 Subject to and without waiving the forgoing objections, Defendant responds as follows:

10 Approximately 133,396 earning statements.

11 **SPECIAL INTERROGATORY NO. 7:**

12 For the period of January 1, 2016 through December 31, 2016 what were the number of  
13 Swift non-exempt truck drivers that were compensated with a mileage based pay plan whose  
14 earning statements showed them to have a California address and that California state tax was  
15 being deducted.

16 **RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

17 By this reference, Defendant incorporates its Preliminary Statement and General  
18 Objections set forth above. Defendant objects to this interrogatory on the ground that it is  
19 overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this  
20 interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-  
21 exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and  
22 federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as  
23 not containing the term "non-exempt."

24 Subject to and without waiving the forgoing objections, Defendant responds as follows:

25 3,625 drivers.

26 **SPECIAL INTERROGATORY NO. 8:**

27 For the period of January 1, 2016 through December 31, 2016 what were the total number  
28 of earning statements issued by Swift for all Swift non-exempt truck drivers that were

1 compensated with a mileage based pay plan whose earning statements showed them to have a  
2 California address and that California state tax was being deducted.

3 **RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

4 By this reference, Defendant incorporates its Preliminary Statement and General  
5 Objections set forth above. Defendant objects to this interrogatory on the ground that it is  
6 overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this  
7 interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-  
8 exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and  
9 federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as  
10 not containing the term "non-exempt."

11 Subject to and without waiving the forgoing objections, Defendant responds as follows:  
12 Approximately 111,622 earning statements.

13 **SPECIAL INTERROGATORY NO. 9:**

14 For the period of January 1, 2017 through the date of your verified response what were the  
15 number of Swift non-exempt truck drivers that were compensated with a mileage based pay plan  
16 whose earning statements showed them to have a California address and that California state tax  
17 was being deducted.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

19 By this reference, Defendant incorporates its Preliminary Statement and General  
20 Objections set forth above. Defendant objects to this interrogatory on the ground that it is  
21 overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this  
22 interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-  
23 exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and  
24 federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as  
25 not containing the term "non-exempt."

26  
27  
28

1 Subject to and without waiving the forgoing objections, Defendant responds as follows:  
2 As of May 2017, 1,916 drivers.

3 **SPECIAL INTERROGATORY NO. 10:**

4 For the period of January 1, 2017 through the date of your verified response what were the  
5 total number of earning statements issued by Swift for all Swift non-exempt truck drivers that  
6 were compensated with a mileage based pay plan whose earning statements showed them to have  
7 a California address and that California state tax was being deducted.

8 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

9 By this reference, Defendant incorporates its Preliminary Statement and General  
10 Objections set forth above. Defendant objects to this interrogatory on the ground that it is  
11 overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to this  
12 interrogatory on the ground that it is vague and ambiguous. Defendant objects to the term "non-  
13 exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and  
14 federal law. In a good faith effort to provide information, Swift will interpret this Interrogatory as  
15 not containing the term "non-exempt."

16 Subject to and without waiving the forgoing objections, Defendant responds as follows:  
17 As of May 2017, approximately 43,337 pay statements.

18 **SPECIAL INTERROGATORY NO. 11:**

19 As to each individual who worked for Swift as a Swift non-exempt truck driver that was  
20 compensated with a mileage based pay plan whose earning statements showed them to have a  
21 California address and that California state tax was being deducted. State their name, date of hire,  
22 date of termination, and how many paystubs were issued to each such individual from October 18,  
23 2013 to the date of your verified response.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

25 By this reference, Defendant incorporates its Preliminary Statement and General  
26 Objections set forth above. Defendant objects to this interrogatory because it seeks information  
27 protected from disclosure by privacy laws. Defendant objects to this interrogatory on the ground  
28 that it is overbroad in scope, unduly burdensome, oppressive and harassing. Defendant objects to



1 this interrogatory on the ground that it is vague and ambiguous. Defendant objects to this  
2 interrogatory on the ground that it seeks information that is neither relevant nor reasonably  
3 calculated to lead to the discovery of admissible evidence. Defendant objects to the term "non-  
4 exempt." All or nearly all of Swift's truck drivers are exempt from overtime under both state and  
5 federal law.

6 **SPECIAL INTERROGATORY NO. 12:**

7 State the name of each individual who participated in obtaining finding or providing any of  
8 the information requested in any of the previous 11 interrogatories.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

10 By this reference, Defendant incorporates its Preliminary Statement and General  
11 Objections set forth above. Defendant objects to this interrogatory on the ground that it seeks  
12 information that is neither relevant nor reasonably calculated to lead to the discovery of admissible  
13 evidence.

14 Subject to and without waiving the forgoing objections, Defendant responds as follows:  
15 Robin Rohwer was responsible for compiling the information provided in Interrogatory Nos. 1  
16 through 10 above.

17 **SPECIAL INTERROGATORY NO. 13:**

18 For each name you have provided in response to interrogatory # 12 please state for each  
19 named individual the specifics of what they did and what records and data bases(s) they used.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

21 By this reference, Defendant incorporates its Preliminary Statement and General  
22 Objections set forth above. Defendant objects to this interrogatory on the ground that it seeks  
23 information that is neither relevant nor reasonably calculated to lead to the discovery of admissible  
24 evidence. Defendant objects to this interrogatory on the ground that it seeks to invade the  
25 attorney-client privilege and/or the attorney work product doctrine.

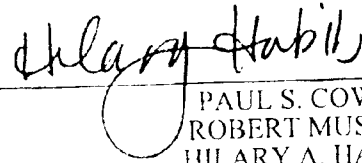
26 Subject to and without waiving the forgoing objections, Defendant responds as follows:  
27 The information was obtained by accessing and recalling information from employee databases  
28 maintained by Swift in the ordinary course of business.



1 Dated: May 30, 2017

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

3  
4 By



5 PAUL S. COWIE  
6 ROBERT MUSSIG  
7 HILARY A. HABIB  
8 Attorneys For Defendant  
9 SWIFT TRANSPORTATION CO. OF ARIZONA,  
10 LLC  
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES


I have read the foregoing **DEFENDANT SWIFT TRANSPORTATION CO. OF ARIZONA, LLC'S RESPONSES TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET ONE** and know its contents.

I am the Director of Payroll for Swift Transportation Co. of Arizona, LLC, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on May 30 2017, at Phoenix, Arizona.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Robin Rohwer  
Name of Signatory

  
Signature

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

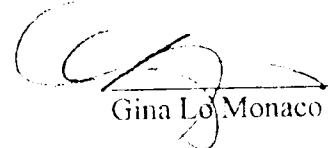
On May 30, 2017, I served true copies of the following document(s) described as **DEFENDANT USA WASTE OF CALIFORNIA, INC.'S RESPONSE TO DONALD TUMBLIN'S SPECIAL INTERROGATORIES, SET FOUR** on the interested parties in this action as follows:

Neal J. Fialkow  
James S. Cahill  
Law Offices of Neal J. Fialkow, Inc.  
215 North Marengo Avenue, Third Floor  
Pasadena, CA 91101

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 30, 2017, at Los Angeles, California.

  
Gina Lo Monaco

# EXHIBIT 7

Atkinson-Baker Court Reporters  
www.depo.com

SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE

LAWRENCE J. PECK, an individual )  
and on behalf of all similarly )  
aggrieved employees, )  
Plaintiff, )  
vs. ) Case No.  
SWIFT TRANSPORTATION CO. ) RIC 1411184  
ARIZONA, LLC and DOES 1 through )  
30 inclusive, )  
Defendants. )

DEPOSITION OF JAMES FITZSIMMONS

Phoenix, Arizona  
November 30, 2016

ATKINSON-BAKER, INC.  
COURT REPORTERS  
(800) 288-3376  
www.depo.com

REPORTED BY: CHARLOTTE LACEY, RPR, CR NO. 50859  
FILE NO.: AA07A03

1 Q. And are there some line-haul drivers that work  
2 just intrastate and some that are interstate?

3 A. Mostly would be interstate. There could be  
4 exceptions where a line-haul driver could possibly be  
5 intrastate.

6 Q. Okay. And all of my questions to this category  
7 of different categorizations of drivers is for the  
8 California market. You understand that, right?

9 A. Yes.

10 Q. Okay. So we have a line-haul driver that could  
11 be intrastate, could be interstate, right?

12 A. Right.

13 Q. But mostly are interstate --

14 A. Correct.

15 Q. -- true?

16 And are all line-haul drivers employees?

17 A. No.

18 Q. All right. And if you're not an employee, what  
19 would you be? An owner-operator?

20 A. Correct.

21 Q. Okay. Now, my lawsuit is only for nonexempt  
22 employees, so that would not include the owner-operators.  
23 Am I correct?

24 A. No.

25 MR. MUSSIG: Calls for a legal conclusion.

Atkinson-Baker Court Reporters  
www.depo.com

REPORTER'S CERTIFICATE

I, CHARLOTTE LACEY, RPR, CR No. 50859, Certified Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of Arizona that the foregoing is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
CHARLOTTE LACEY, RPR  
Certified Reporter No. 50859

\_\_\_\_\_  
For Atkinson-Baker, Inc.  
Registered Reporting Firm No. R-1029

# EXHIBIT 8



Atkinson-Baker Court Reporters  
www.depo.com

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

-----X  
LAWRENCE J. PECK, an individual and  
on behalf of all other similarly  
aggrieved employees,

Plaintiffs,

vs.

No. RIC 1411184

SWIFT TRANSPORTATION CO. ARIZONA,  
LLC and DOES 1 through 30, inclusive,

Defendants.  
-----X

DEPOSITION OF SWIFT TRANSPORTATION CO. ARIZONA, LLC, PMQ,  
JAMES LEE FITZSIMMONS

VOLUME I

Phoenix, Arizona  
July 26, 2017  
10:00 a.m.

ATKINSON-BAKER, INC., COURT REPORTERS  
Arizona Registered Firm R1029  
1.800.288.3376 www.depo.com

REPORTED BY:  
LISA A. NANCE, RPR, CR (AZ)  
Registered Professional Reporter  
Certified Reporter  
Certificate No. 50349

Job No. AB07B82

1 number could come out different, correct?

2 A. What number?

3 Q. The amount of compensation.

4 A. The amount of the total compensation?

5 Q. For that trip.

6 A. Yes.

7 Q. And that would be dependent upon what happens  
8 on the trip, correct?

9 A. Yes.

10 Q. So, for example, you indicate it's the tasks  
11 necessary to complete the trip, correct?

12 A. Correct.

13 Q. So let's say on a pre-trip, what does a  
14 pre-trip normally take, 10 minutes? Normal --

15 A. Not normal, no.

16 Q. How long would you say a pre-trip normally  
17 takes?

18 A. It would depend on --

19 Q. Pre-trip inspection.

20 A. It would depend on the driver.

21 Q. What is an average time?

22 A. Two minutes.

23 Q. Okay. What would you say the range is from  
24 driver to driver, if you were going to give a high and  
25 low, that you would consider within the ballpark and not

STATE OF ARIZONA            )  
COUNTY OF MARICOPA        ) SS.


BE IT KNOWN that the foregoing proceedings were taken before me; that the witness before testifying was duly sworn by me to testify to the whole truth; that the foregoing pages are a full, true, and accurate transcript of the proceedings, all done to the best of my skill and ability; that the proceedings were taken down by me in shorthand and thereafter reduced to print under my direction.

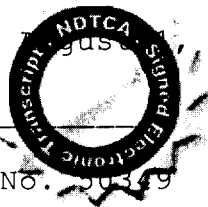
I CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

Review and signature was requested.

I CERTIFY that I have complied with the ethical obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206 J(1)(g)(1) and (2).

Dated at Phoenix, Arizona, 2017.

  
LISA A. NANCE, RPR, CR  
Certified Reporter; Arizona CR No. 50349



\* \* \* \* \*

I CERTIFY that ATKINSON-BAKER, INC., has complied with the ethical obligations set forth in ACJA 7-206 (J)(1)(g)(1) through (6).

ATKINSON-BAKER, INC.  
Arizona Registered Reporting Firm, Arizona RRF No. 1029

# EXHIBIT 9

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
RONALD J. HOLLAND, Cal. Bar No. 148687  
3 rholland@sheppardmullin.com  
Four Embarcadero Center, 17<sup>th</sup> Floor  
4 San Francisco, California 94111-4109  
Telephone: 415.434.9100  
5 Facsimile: 415.434.3947

6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
PAUL S. COWIE, Cal. Bar No. 250131  
7 pcowie@sheppardmullin.com  
379 Lytton Ave.  
8 Palo Alto, California 94301  
Telephone: 650.815.2600  
9 Facsimile: 650.815.2601

10 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
ROBERT MUSSIG, Cal. Bar No. 240369  
11 rmussig@sheppardmullin.com  
333 South Hope Street, 43rd Floor  
12 Los Angeles, California 90071-1422  
Telephone: 213.620.1780  
13 Facsimile: 213.620.1398

14 Attorneys for Defendant SWIFT  
15 TRANSPORTATION CO. OF ARIZONA,  
LLC  
16

17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA

19 LAWRENCE J. PECK, an individual,  
appearing individually and on behalf of  
20 all others similarly situated,

21 Plaintiffs,

22  
23 v.

24 SWIFT TRANSPORTATION CO.  
ARIZONA, LLC and DOES 1 through  
25 30, inclusive,

26 Defendants.  
27  
28

Case No.

[Riverside Superior Court Case No. RIC  
1409181]

**NOTICE OF REMOVAL OF  
ACTION PURSUANT TO 28 U.S.C.  
§§ 28 U.S.C. SECTIONS 1332(d),  
1441, AND 1446**

**(CLASS ACTION FAIRNESS ACT)**

[State Court Complaint Filed:  
September 25, 2014]

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA:

3  
4 Please take notice that Defendant SWIFT TRANSPORTATION CO.  
5 OF ARIZONA, LLC, erroneously named as SWIFT TRANSPORTATION CO.  
6 ARIZONA, LLC, hereby removes the matter of *Lawrence J. Peck v. Swift*  
7 *Transportation Co. Arizona, LLC, et al.*, pending in the Superior Court of the State  
8 of California in and for the County of Riverside, Case No. RIC 1409181, to the  
9 United States District Court for the Central District of California pursuant to 28  
10 U.S.C. §§ 1332(d), 1441(b), and 1446.

11  
12 Removal is based on the Class Action Fairness Act ("CAFA"), 28  
13 U.S.C. Sections 1332(d), 1441(b) and 1446, on the following grounds:

14  
15 I.

16 **STATEMENT OF JURISDICTION UNDER THE CLASS ACTION**

17 **FAIRNESS ACT**

18 1. On February 18, 2005, the Class Action Fairness Act ("CAFA"  
19 or the "Act") was enacted. In relevant part, the CAFA grants federal district courts  
20 original jurisdiction over civil class action lawsuits filed under federal or state law in  
21 which any member of a class of plaintiffs is a citizen of a state different from any  
22 defendant, and where the matter in controversy exceeds \$5,000,000, exclusive of  
23 interest and costs.

24  
25 2. This Court has jurisdiction over this case under the Class Action  
26 Fairness Act, 28 U.S.C. section 1332(d), and this case may be removed pursuant to  
27 the provisions of 28 U.S.C. section 1441(a), in that it is a civil class action wherein:  
28 1) the proposed class contains at least 100 members; 2) the defendant is not a state,

1 state official or other governmental entity; 3) the total amount in controversy for all  
2 class members exceeds \$5,000,000 and; 4) there is diversity between at least one  
3 class member and one defendant.

4  
5 3. The CAFA's minimal diversity requirement is satisfied when: 1)  
6 at least one plaintiff is a citizen of a state in which none of the defendants are  
7 citizens, 2) at least one plaintiff is a citizen of a foreign state and one defendant is a  
8 U.S. citizen, or 3) at least one plaintiff is a U.S. citizen and one defendant is a  
9 citizen of a foreign state. *See* 28 U.S.C. § 1332(d).

10  
11 4. As set forth below, this case meets all of CAFA's requirements  
12 for removal and is timely and properly removed by the filing of this Notice.

13  
14 II.

15 **STATUS OF PLEADINGS**

16 5. On or about September 25, 2014, Plaintiff filed a Complaint in  
17 the Superior Court of the State of California in and for the County of Riverside,  
18 entitled *Lawrence J. Peck v. Swift Transportation Co. Arizona, LLC, et al.*, Case No.  
19 RIC 1409181. The Complaint is a purported class action.

20  
21 6. A copy of the Complaint, Summons, and Civil Case Cover Sheet  
22 was served on Swift Transportation Co. of Arizona, LLC ("Swift" or "Defendant")  
23 on September 26, 2014. True and correct copies of the Summons, Complaint, Civil  
24 Case Cover Sheet, Proof of Service, and all other pleadings, process, and orders  
25 served on Defendant in this action are attached hereto, collectively, as Exhibit A.<sup>1</sup>

26  
27  
28 <sup>1</sup> Defendant asks the Court to take judicial notice of the exhibits attached to this Notice  
of Removal, all of which are pleadings filed with or by other California courts.





1           12. This Court has jurisdiction over this action pursuant to CAFA,  
2 28 U.S.C. section 1332(d), and this case may be removed by Defendant pursuant to  
3 the provisions of 28 U.S.C. section 1441(a), in that it is a civil class action wherein:  
4 (1) the proposed class contains at least 100 members; (2) Defendant is not the state,  
5 state official or other governmental entity; (3) the total amount in controversy  
6 exceeds \$5,000,000; and (4) there is diversity between at least one class member  
7 and Defendant. 28 U.S.C. § 1332.

8  
9           13. Further, none of the exceptions contained in 28 U.S.C. section  
10 1332(d)(3)-(5) are applicable here, as demonstrated below.

11  
12 A. **Minimum Diversity Of Citizenship Exists Here**

13           14. Plaintiff's Complaint alleges that he is a resident of California.  
14 Complaint, ¶ 1. From March 14, 2013 to December 17, 2013, Plaintiff was  
15 employed by Defendant as a driver assigned to Swift's Fontana terminal in  
16 California. Rohwer Decl., ¶ 8. Further, based on a review of Plaintiff's personnel  
17 file, Defendant is informed and believes that his last known residence address is  
18 4132 Grandview Bld., Los Angeles, CA 90066. Rohwer Decl., ¶ 8. Accordingly,  
19 Plaintiff is a citizen of California for purposes of determining diversity. *See* 28  
20 U.S.C. § 1332(a)(1) (an individual is a citizen of the state in which he or she is  
21 domiciled); *see also State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th  
22 Cir. 1994) (residence is *prima facie* evidence of domicile for purposes of  
23 determining citizenship).

24  
25           15. For diversity purposes, a limited liability company is deemed to  
26 be a citizen of the state of each of its members. *See, e.g., Cosgrove v. Bartolotta*,  
27 150 F.3d 729, 731 (7th Cir. 1998); *Johnson v. Columbia Properties Anchorage, LP*,  
28 437 F.3d 894, 899 (9th Cir. 2006). Swift's sole member is Swift Transportation Co.,

1 LLC ("Swift Transportation"). In turn, Swift Transportation's sole member is Swift  
2 Transportation Company ("Swift Co."). Rohwer Decl., ¶ 4.

3  
4 16. As a corporation, Swift Co. is deemed to be a citizen of the state  
5 in which it has been incorporated and the state where it has its principal place of  
6 business. 28 U.S.C. § 1332(c)(1).

7  
8 17. In *Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1192 (2010), the  
9 Supreme Court clarified the definition of a corporation's "principal place of  
10 business" and concluded that that "'principal place of business' is best read as  
11 referring to the place where a corporation's officers direct, control, and coordinate  
12 the corporation's activities." The Supreme Court further clarified that, "in practice"  
13 the principle place of business "should normally be the place where the corporation  
14 maintains its headquarters—provided that the headquarters is the actual center of  
15 direction, control, and coordination." *Hertz Corp.*, 130 S.Ct. at 1192.

16  
17 18. Under the foregoing standard, Swift Co. is a citizen of Arizona  
18 and Delaware for purposes of removal. Swift Co. was incorporated in the State of  
19 Delaware and maintains its corporate headquarters in Phoenix, Arizona. Rohwer  
20 Decl., ¶¶ 4 to 6. Phoenix, Arizona is where the vast majority of the Swift Co.'s  
21 corporate and executive officers are employed. *Id.* at ¶ 5. The vast majority of  
22 Swift Co.'s administrative functions (including that of legal, payroll, human  
23 resources, marketing, operations and planning), are conducted in Phoenix, Arizona.  
24 *Id.* And Phoenix, Arizona is also where the actual center of direction, control and  
25 coordination for Swift Co. takes place. *Id.* This is well established by the facts that:  
26 corporate headquarters is the actual center of direction, control and coordination of  
27 all major human resources, payroll, legal and administrative functions; the  
28 respective officers for these departments work in Phoenix, Arizona and are

1 responsible for developing policies and protocols for Swift Co.; and Swift Co.'s  
2 Board of Directors meets in Phoenix, Arizona. Rohwer Decl., ¶¶ 5 to 6.  
3 Accordingly, Swift Co.'s principal place of business is in Arizona. *Id.*; see also 28  
4 U.S.C. § 1332(c)(1); *Tosco Corp.*, 236 F.3d at 500.

5  
6 19. Likewise, the facts establish that Swift and Swift  
7 Transportation's principal places of business are located in Arizona as well. As with  
8 Swift Co., Swift and Swift Transportation maintain their corporate headquarters in  
9 Phoenix, Arizona. Rohwer Decl., ¶¶ 5 to 6. The administrative functions crucial to  
10 Swift's and Swift Transportation's day-to-day operations, including their payroll and  
11 human resources functions, are conducted in their Phoenix headquarters, and most  
12 corporate records are kept there as well. *Id.* at ¶ 6. The corporate headquarters for  
13 each entity is the actual center of direction, control and coordination of all major  
14 human resources, payroll, legal and administrative functions. *Id.* The respective  
15 heads for these departments for both entities work in Phoenix, Arizona and are  
16 responsible for developing policies and protocols for Swift and Swift  
17 Transportation. *Id.* Moreover, their Boards of Directors meet in Phoenix, Arizona.  
18 *Id.* Lastly, their executives work in Phoenix, Arizona. *Id.* Swift also employs more  
19 individuals in the state of Arizona than it does in any other state, including  
20 California, and although Swift's customers are located throughout the country in  
21 nearly forty-eight states, in general, customers located in Illinois, Indiana and  
22 Arizona generate more loads of freight than any other state (including California).  
23 *Id.* at ¶¶ 11 to 12. Accordingly, Swift's and Swift Transportation's principal places  
24 of business are also in Arizona. *Id.* at ¶ 5.

25  
26 20. Pursuant to 28 U.S.C. Section 1441(a), the residence of fictitious  
27 and unknown defendants should be disregarded for purposes of establishing removal  
28 jurisdiction under 28 U.S.C. Section 1332. *Fristos v. Reynolds Metals Co.*, 615 F.2d

1 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a  
2 removal petition). *Soliman v. Philip Morris, Inc.*, 311 F.3d 966, 971 (9th Cir. 2002)  
3 (citizenship of fictitious defendants disregarded for removal). Thus, the existence of  
4 Doe defendants 1 through 30, does not deprive this Court of jurisdiction.

5  
6 21. In accordance with the foregoing, Plaintiff is a citizen of the  
7 State of California, while Swift and Swift Transportation are citizens of the States of  
8 Arizona and Delaware (which is the principal place of business and state of  
9 incorporation, respectively, for Swift Co.). Thus, the minimum diversity  
10 requirement under CAFA is satisfied.

11  
12 22. Venue is proper in this Court pursuant to 28 U.S.C. sections  
13 84(a), and 1391.

14  
15 B. **The Amount In Controversy Exceeds The \$5,000,000 Requirement**  
16 **Under The CAFA**

17 23. Without making an admission of liability or damages with  
18 respect to any aspect of this case or to the proper legal test(s) applicable to  
19 Plaintiff's allegations, the amount placed in controversy by Plaintiff's claims  
20 exceeds the jurisdictional minimum of this Court. *Sanchez v. Monumental Life Ins.*  
21 *Co.*, 102 F.3d 398, 404 (9th Cir. 1996); *Singer v. State Farm Mutual Auto. Ins. Co.*,  
22 116 F.3d 373, 376 (9th Cir. 1997).

23  
24 24. Defendant is not obliged to "research, state, and prove the  
25 plaintiff's claims for damages." *McCraw v. Lyons*, 863 F. Supp. 430, 434 (W.D.  
26 Ky. 1994). Defendant can establish the amount in controversy by the allegations in  
27 the Complaint, or by setting forth facts in the notice of removal that demonstrate  
28 that the amount placed in controversy by Plaintiff exceeds the jurisdictional

1 minimum. In other words, the District Court may consider whether it is facially  
2 apparent from the Complaint that the jurisdictional amount is in controversy. *Singer*  
3 *v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997); *Conrad Assoc.*  
4 *v. Hartford Accident & Indem. Co.*, 994 F. Supp. 1196, 1198 (N.D. Cal. 1998). In  
5 addition to the contents of the removal petition, the Court considers “summary-  
6 judgment-type evidence relevant to the amount in controversy at the time of  
7 removal,” such as affidavits or declarations. *Valdez v. Allstate Ins. Co.*, 372 F.3d  
8 1115, 1117 (9th Cir. 2004); *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373,  
9 377 (9th Cir. 1997).

10

11           25. In measuring the amount in controversy, a court must assume  
12 that the allegations of the complaint are true and that a jury will return a verdict for  
13 Plaintiff on all claims made in the complaint. *Kenneth Rothschild Trust v. Morgan*  
14 *Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002). The ultimate  
15 inquiry is what amount is put “in controversy” by Plaintiff’s complaint, not what  
16 Defendants will actually owe. *Rippee v. Boston Market Corp.*, 408 F. Supp. 2d 982,  
17 986 (S.D. Cal. 2005); *see also Scherer v. Equitable Life Assurance Society of the*  
18 *United States*, 347 F.3d 394, 399 (2d Cir. 2003) (recognizing that the ultimate or  
19 provable amount of damages is not what is considered when determining the amount  
20 in controversy; rather, it is the amount put in controversy by the plaintiff’s  
21 complaint).

22

23           26. Defendant provides the following calculations only to  
24 demonstrate that the amount in controversy in this case exceeds the minimum  
25 jurisdictional amount in controversy under the CAFA. Defendant makes no  
26 admission of any liability or damages with respect to any aspect of this case, or to  
27 the proper legal test to be applied to Plaintiff’s claims. Nor does Defendant waive  
28

1 its right to ultimately contest the proper amount of damages due, if any, should  
2 Plaintiff prevail with respect to any of his claims.  
3

4           27. This action has been styled as a class action pursuant to  
5 California Code of Civil Procedure section 382. Complaint, ¶¶ 9 to 12. California  
6 Code of Civil Procedure section 382 is a state statute authorizing an action to be  
7 brought by one or more representative persons as a class action. Plaintiff brings this  
8 action on behalf of himself and "All persons presently and formerly employed by  
9 Defendants Swift and Does 1-30 in California as non-exempt hourly truck drivers  
10 who performed services in California for any period of time within four years prior  
11 to the initiation of this action through certification ('the Class [P]eriod')."   
12 Complaint, ¶ 9. However, despite this statement as to hourly truck drivers, the body  
13 of the Complaint makes apparent that Plaintiff actually seeks to represent all such  
14 drivers paid on a mileage basis. For example, Plaintiff's Complaint states that "the  
15 compensation for Plaintiff and the rest of the Class was calculated by Defendants on  
16 a piece rate basis, *i.e.*, by multiplying a pre-set mileage rate by the number of miles  
17 in a truck trip." Complaint, ¶ 15. *See also* Complaint, ¶¶ 10(c)(ii) (explaining that  
18 common questions of fact or law predominate this action, including "whether  
19 Defendants' practice of paying Plaintiff and the rest of the class on a piece rate  
20 basis, *i.e.*, per mile, without providing additional compensation for non-driving tasks  
21 violates the California Labor Code and applicable IWC Wage Order(s)); 13 to 18.  
22

23           28. The Act authorizes the removal of class actions in which, among  
24 the other factors mentioned above, *the aggregate* amount in controversy for all class  
25 members exceeds five million dollars (\$5,000,000.00). *See* 28 U.S.C. § 1332(d).  
26 The allegations in Plaintiff's Complaint and the claimed penalties greatly exceed the  
27 jurisdictional minimum. By demonstrating that the actual amount in controversy  
28 exceeds the threshold, Defendant does not concede the validity of Plaintiff's claims,



1 the legal bases for the damages calculations, or the likelihood that Plaintiff will  
2 recover anything.

3  
4 29. Defendant provides the following calculations only to  
5 demonstrate that the amount in controversy in this case easily exceeds the amount in  
6 controversy requirement of the Act. Defendant makes no admission of any liability  
7 or damages with respect to any aspect of this case, nor do they endorse or concede  
8 that the proffered methodology for such calculations passes muster.

9  
10 30. The statutes of limitation on the various claims asserted in the  
11 Complaint are up to four years. Business & Profession Code § 17208; *Deutsch v.*  
12 *Turner Corp.*, 324 F 3d 692, 2003 U.S. App. LEXIS 3942 (2002), 192 ALR Fed  
13 657; *Cazares v. Household Fin. Corp.*, 2005 U.S. Dist. LEXIS 39222 (2005). Thus,  
14 the putative class period, as alleged in the Complaint, is from September 25, 2010 to  
15 present (the "Class Period").

16  
17 31. During the Class Period, Defendant employed over 9,500 drivers  
18 assigned to terminals in California. Rohwer Decl., ¶ 10. Swift pays its drivers that  
19 are assigned to terminals in California on a weekly basis. *Id.* at ¶ 13.

20  
21 32. Plaintiff's First Cause of Action alleges that Defendant failed to  
22 pay putative class members the state-mandated minimum wage. Complaint, ¶¶ 13  
23 to 18. Plaintiff also seeks liquidated damages pursuant to Labor Code § 1194.2.  
24 Prayer, pp. 14. Because Plaintiff also asserts a claim under Business and  
25 Professions Code section 17200, the statute of limitations for his minimum wage  
26 claim increases from three years to four years. Complaint, ¶¶ 39 to 45.

27  
28

1           33. In support of his minimum wage claim, Plaintiff alleges that  
2 because drivers were compensated based solely on a mileage system, drivers were  
3 not paid for pre-trip inspections and post-trip inspections, completion of paperwork  
4 (such as trip sheets and portions of bills of lading and scale tickets and lumping  
5 receipts), scanning paperwork, communications with Defendant, completion of  
6 Department of Transportation ("DOT") paperwork, weight inspections, truck  
7 fueling, servicing, and repairing, installing and removing tire chains, as well as  
8 waiting time in connection with loading and unloading trucks, layovers, and  
9 breakdowns. Complaint, ¶ 15.

10  
11           34. Plaintiff's class allegations of unpaid wages for pre-trip and post-  
12 trip inspections alone meets the amount in controversy requirement. DOT  
13 regulations mandate that drivers must conduct both a pre-trip and post-trip  
14 inspection at least once a day. *See* 49 CFR 392.7 (explaining that a commercial  
15 vehicle should not be driven unless the driver is satisfied that the vehicle is in  
16 working order); 392.8; 392.9 ("[R]eexamination and any necessary adjustments [of  
17 the cargo] must be made whenever . . . [t]he driver makes a change of his/her duty  
18 status."). Assuming such inspections take ten minutes each, and that drivers worked  
19 5 days per week (or 260 days per year), the amount in controversy arising from the  
20 alleged failure to pay for pre- and post-trip inspections is \$6,864,000 (\$8.00  
21 (minimum wage for the majority of the Class Period), multiplied by 20 minutes (.33  
22 hours), multiplied by 260 days, multiplied by four years (statute of limitations),  
23 multiplied by 2,500 average active drivers each day assigned to California  
24 terminals). *See* Rohwer Decl., ¶ 10. Given that drivers were paid substantially  
25 more than minimum wage the amount in controversy is actually substantially higher  
26 than these conservative calculations. *See* Rohwer Decl., ¶ 9.



1           35. In addition, Plaintiff seeks liquidated damages on his minimum  
2 wage claim pursuant to Labor Code Section 1194.2(a), which provides for  
3 liquidated damages in the amount equal to the wages allegedly unpaid. Thus,  
4 Plaintiff places an additional 6,864,000 in controversy through his claim for  
5 liquidated damages. Plaintiff's class allegations of unpaid pre-trip and post-trip  
6 inspections places an amount in controversy of \$13,728,000.

7  
8           36. Plaintiff's Third Cause of Action alleges that Defendant failed to  
9 pay overtime wages. Complaint, ¶¶ 23 to 25. An employee is entitled to overtime  
10 wages for working over eight hours in one day or over forty hours in one work  
11 week. Cal. Labor Code section 510. Overtime is paid at no less than time and a half  
12 an employee's regular rate of pay. *Id.* Conservatively assuming that Defendant  
13 failed to pay drivers one hour of overtime per week, the amount in controversy for  
14 this cause of action would be \$6,240,000 (\$8.00 (minimum wage for the majority of  
15 the Class Period) x 1.5=\$12 (overtime rate) x 52 weeks x 4 years (Class Period) x  
16 2,500 average active drivers each day assigned to California terminals). Therefore,  
17 the potential recovery of Plaintiff's Third Cause of Action for overtime  
18 demonstrates that the amount in controversy for this claim also exceeds the  
19 minimum jurisdictional amount.

20  
21           37. Furthermore, Plaintiff's Sixth Cause of Action asserts a cause of  
22 action for failure to comply with itemized employee wage statements pursuant to  
23 Labor Code section 226. Complaint, ¶¶ 34 to 38. Section 226(e) provides for  
24 damages for this alleged failure as follows:

25  
26           (e) An employee suffering injury as a result of a knowing  
27 and intentional failure by an employer to comply with  
28 subdivision (a) is entitled to recover the greater of all  
actual damages or fifty dollars (\$50) for the initial pay  
period in which a violation occurs and one hundred dollars  
(\$100) per employee for each violation in a subsequent

1 pay period, not exceeding an aggregate penalty of four  
2 thousand dollars (\$4,000) and is entitled to an award of  
3 costs and reasonable attorney's fees.

4 38. Assuming, for the purposes of removal only, that Plaintiff's  
5 allegation that the wage statements of each driver were deficient to be true, and the  
6 Court were to accept a claim by Plaintiff that the maximum penalty of \$4,000  
7 should be awarded to each putative class member, the amount in controversy for  
8 such penalties would be \$38,000,000. (9,500 drivers x \$4,000 = \$38,000,000.) This  
9 potential recovery under Section 226 further serves to demonstrate that the amount  
10 in controversy in this case exceeds the minimum jurisdictional amount, permitting  
11 removal of this action.

12 39. Plaintiff's claims for attorneys' fees must also be considered in  
13 determining whether the jurisdictional limit is met. Complaint, Prayer at pp. 13-15.  
14 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (attorneys' fees  
15 recoverable by statute or contract are properly included in the amount in  
16 controversy.) In California, where wage and hour class actions have settled prior to  
17 trial for millions of dollars, it is not uncommon for an attorneys' fee award to be  
18 twenty-five to forty percent of the settlement and, thus, in excess of \$5,000,000.<sup>2</sup>  
19

20 40. In addition to the claims outlined above, Plaintiff also claims  
21 penalties pursuant to Labor Code § 203 in the amount of 30 days' pay for each  
22

23 <sup>2</sup> See *Butler et. al. v. Countrywide Financial Corp.*, Los Angeles County Superior  
24 Court Case No. BC 268250 (April 2005) (preliminary approval given for \$30  
25 million settlement for alleged misclassification of approximately 400 account  
26 executives; attorney's fees award estimated at 25% or \$7.5 million); see also *Bell v.*  
27 *Farmers Insurance Exchange*, 115 Cal.App.4th 715 (2005) (case went to trial as a  
28 class action in July 2001, resulting in a \$90 million jury award for overtime pay,  
virtually all of which was upheld on appeal. Class consisted of approximately 9,400  
insurance claims adjusters. The court awarded attorney's fees totaling  
approximately \$9.4 million.)

1 driver who is no longer employed by Defendant. Complaint, ¶¶ 30-33. Of the  
2 9,500 employee drivers assigned to a terminal in California during the Class Period,  
3 approximately 7,000 are former employees. Rohwer Decl., ¶ 10. Assuming a  
4 regular full time eight hour work day, the amount of such damages would be  
5 approximately \$13,440,000. (8 hours per day, multiplied by the minimum wage of  
6 \$8.00, multiplied by 30 days, multiplied by 7,000 former drivers). Again, this claim  
7 alone is sufficient to meet the amount in controversy requirements necessary to  
8 support removal to this Court.

9  
10 41. As set forth above, Defendant has demonstrated that the amount  
11 placed in controversy by Plaintiff is substantially greater than the jurisdictional  
12 amount of \$5,000,000 required by the Act. The amount in controversy requirement  
13 for CAFA is, therefore, met based on Plaintiff's pleaded facts and claims.

14  
15 C. **No CAFA Exceptions Apply**

16 42. CAFA contains a number of exceptions to its grant of original  
17 jurisdiction, contained in 28 U.S.C. §§ 1332(d)(3)-(5). However, none of these  
18 exceptions are applicable here.

19  
20 43. The first is a discretionary exception based on the number of  
21 putative class members found in the state where the action was filed. *See* 28 U.S.C.  
22 § 1332(d)(3). However, the exception only applies where the "primary defendants  
23 are citizens of the State in which the action was originally filed." Here, the action  
24 was originally filed in California and, as noted above, Defendant in this action is  
25 not a citizen of California. Thus, this exception does not apply.

26  
27 44. Similarly, 28 U.S.C. § 1332(d)(4) contains two further  
28 exceptions to CAFA's grant of jurisdiction, based on the number of putative class

1 members in the state in which the action was filed. However, this exception, too,  
2 only applies where all primary defendants, or at least one defendant, is a "citizen of  
3 the State in which the action was originally filed." *See* 28 U.S.C. §§  
4 1332(d)(4)(A)(i)(II) and 1332(d)(4)(B). Given that this action was originally filed  
5 in California, and Defendant is not a California citizen, these exceptions also do not  
6 apply.

7  
8 45. Finally, 28 U.S.C. § 1332(d)(5) presents two additional  
9 exceptions for Defendants who are government entities, or putative classes which  
10 number less than 100 in the aggregate. *See* 28 U.S.C. §§ 1332(d)(5)(A)-(B). Given  
11 that Defendant is not a governmental entity, and the proposed class numbers are in  
12 the thousands, these exceptions also do not apply.

13  
14 IV.

15 **JOINDER**

16 46. Defendant is not aware of any other defendant that exists and  
17 who has been named in the Complaint or who has been served with a summons and  
18 the Complaint. *See* Exhibit A.

19  
20 V.

21 **TIMELINESS OF REMOVAL**

22 47. This Notice of Removal is timely in that it has been filed within  
23 thirty (30) days of service of the Complaint on Defendant on September 26, 2014.

24  
25 VI.

26 **NOTICE TO PLAINTIFF**

27 48. Contemporaneously with the filing of this Notice of Removal in  
28 the United States District Court for the Central District of California, written notice

1 of such filing will be served on Plaintiff's counsel of record, at Neal J. Fialkow and  
2 James S. Cahill, Law Office of Neal J. Fialkow, Inc., 215 N. Marengo Avenue,  
3 Third Floor, Pasadena, California, 91101. In addition, a copy of this Notice of  
4 Removal will be filed with the Clerk of the Court for the Superior Court of the  
5 County of Riverside, California.

6  
7 49. In compliance with 28 U.S.C. § 1446(a), true and correct copies  
8 of all "process, pleadings, and orders" from the state court action served on  
9 Defendant or filed by Defendant are attached hereto as Exhibits A and B.

10  
11 WHEREFORE, having provided notice as is required by law, the  
12 above-entitled action should be removed from the Superior Court for the County of  
13 Riverside to this Court.

14 Dated: October 24, 2014

15  
16 SHEPPARD, MULLIN, RICHTER & HAMPTON,  
17 LLP

18  
19 By

*/s/ Paul S. Cowie*

RONALD J. HOLLAND

PAUL S. COWIE

ROBERT MUSSIG

Attorneys For Defendant

SWIFT TRANSPORTATION CO. OF

ARIZONA, LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

On October 24, 2014, I served true copies of the following document(s) described as **NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 28 U.S.C. SECTIONS 132(d), 1441, AND 1446** on the interested parties in this action as follows:

Neal J. Fialkow  
James S. Cahill  
Law Offices of Neal J. Fialkow, Inc.  
215 North Marengo Avenue, Third Floor  
Pasadena, CA 91101

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 24, 2014, at Los Angeles, California.

  
Gina Lo Monaco